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April 26, 2019

Via US Mail and Fax – 510-286-1365

Chief Counsel
Division of Labor Standards Enforcement
1515 Clay Street
Suite 401
Oakland, CA 94612

RE: Request for Opinion

Dear Chief Counsel:

This past December, we reached out to Labor Commissioner Su in an effort to understand why the *Dynamex* standard had not been implemented by the Labor Commissioner's Deputies and Hearing Officers. A copy of our letter dated December 10, 2018, is enclosed herein. To date, the Labor Commissioner Office has not responded.

As advocates for low-wage workers, we regularly represent clients in Berman hearings whose employers have misclassified them as independent contractors. In misclassifying their employees, employers are denying countless low-wage workers minimum wage, overtime, meal and rest breaks, and waiting time penalties.

We are therefore seeking clarification on the application of *Dynamex*'s ABC test in situations such as these, where our clients have experienced Wage Order and Labor Code violations, but where an employer may be asserting an independent contractor defense.

We have actively researched the subject matter on the DLSE website, including the DLSE Enforcement Policies and Interpretations Manual found on the website, but have found no prior DLSE opinion on point, nor have we found any other guidance on this matter. This opinion is not sought in connection with anticipated or pending private litigation concerning the issue addressed in the request, nor is the opinion sought in connection with an investigation or litigation between a client or firm and the DLSE.

Very truly yours,

A handwritten signature in dark ink, appearing to read "D. Hadl", is written over a horizontal line.

Dana Hadl
Directing Attorney, Employment Rights Project

Encl.

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